

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 161/98.

Date of Decision: 26-03-98

Jawahar Singh,

Applicant.

Shri G. S. Walia,

Advocate for
Applicant.

Versus

Union Of India & Others,

Respondent(s)

Shri V. S. Masurkar,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M. R. Kolhatkar, Member (A).

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- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A).

s

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 161/98.

Dated : The 26th day of March, 1998.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Jawahar Singh,
I.P.S. S.P. Railway,
Nagpur.

... Applicant

(By Advocate Shri G.S. Walia)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Home Affairs,
New Delhi.
2. State of Maharashtra
through the Secretary,
Home Department,
Mantralaya,
Mumbai.
3. Shri P. Subramanium,
Chief Secretary,
Home Department,
Mantralaya,
Mumbai.
4. The Chief Election Commissioner,
Election Commission of India,
New Delhi.
5. Prabhakar S. Tayade,
Principal, R.P.T.S., Nagpur.

... Respondents.

(By Advocate Shri V.S. Masurkar)

: ORDER :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

In this O.A. the applicant has challenged his order of transfer dated 09.02.1998 placed at annexure-I transferring him from the post of S.P. Railway, Nagpur to the post of Principal, R.P.T.S., Nanreej. The order states that the Government has

issued this order in consultation with the Election Commission. The applicant had filed a representation on 09.02.1998 requesting for change in his transfer order and posting ^{him} to a metropolitan area. The O.A. was filed on 12.02.1998. Admittedly therefore, the Government did not have time to consider his representation. The interim relief of stay on the transfer was not granted and it is noted that in terms of the transfer order, respondent no. 5, P.S. Tayade, has already reported at Nagpur and unilaterally taken charge. The applicant claims however that he has not handed over the charge and still holds the post of S.P. Railways, Nagpur.

2. The main grounds for challenging the transfer are that the transfer is vindictive, tainted with malice and is against the I.P.S. Cadre rules. The applicant has been working at Nagpur since 04.12.1995 and he has not completed 3 years in one post or 5 years in one district, which is a State Government rule relating to tenure. According to the applicant, the Election Commission was misled by the respondents, namely - Government of Maharashtra, to obtain its permission. There are persons like B.T. Deotale, Ravindra Kadam and the 5th respondent, who belong to State Cadre and were junior to the applicant and they ought to have been transferred. The transfer of the applicant is from a cadre post to a non-cadre post, which amounts to loss of status to the applicant. The transfer ~~has~~ also been ordered in the mid term

which would affect the education of his children (one son studying in 9th Standard and another son studying in 4th Standard).

3. Respondent No. 1 is a preforma party. Respondent No. 4, the Election Commission and Respondent No. 5, Prabhakar S. Tayade (officer posted in the place of applicant) have not chosen to file a reply. Respondent Nos. 2 and 3 have filed the reply. The respondents have opposed the O.A. The respondents have denied that the transfer is vindictive, tainted with malice and violative of statutory rules. According to the respondents, in view of the Lok Sabha Elections of 1998, the Election Commission of India had asked the State Government to effect transfers of Police Officers who were either posted in their home district or are working in the same district for more than four years. To implement the direction of the Election Commission, it was also necessary to shift some other officers to provide posting to the officers who were required to be transferred as per the directions of the Election Commission. In view of this as well as the fact that there were complaints against the applicant, and the applicant himself had requested the Director General of Police for a change to a non-executive post, his name was included in the proposal sent to the Chief Electoral Officer and the Election Commission had approved the said proposal. ~~The applicant has already been~~

relieved from the post. It is stated that the transfers have been effected due to election priorities and irregularities, if any, about cadre or non-cadre post would be corrected after the elections are over. It is admitted that the Respondent No. 5 is a non-cadre officer. It is further conceded that the name of T. B. Deotale, was left out due to an oversight. So far as R.G. Kadam is concerned, it is stated that his four years in Nagpur city would be over in June 1998.

4. In the rejoinder, the applicant has denied that he had at any time requested the Director General to transfer him to a non-executive post. He has also stated that there was any highhanded behaviour or extortion by Railway Police as alleged by the Respondents. The applicant has referred to the State Government Circular dated 27.09.1997 which incorporates the policy relating to State Government transfers and it states that the transfers may normally be ordered in the month of May. Moreover, the transfers may not be ordered unless the Government employee has completed 3 years in a post or has completed 5 years in a district. He has also prayed that the applicant confines his relief to his retention at Nagpur till the current academic and year/for this purpose he relies on the judgement of the Hon'ble Supreme Court in the case of Director Of School Education, Madras & Others V/s. O. Karuppa Thevan & Another, reported in 1994 SCC (L&S) 1180.

5. At the argument stage, the Learned Counsel for the applicant has invited my attention to the judgement of the Tribunal in O.A. No. 540/95 [V.A. Goswami V/s, Union Of India & Others] decided on 27.06.1995. He also relies on the interim orders of this Tribunal in O.A. No. 576/96 in which reliance was placed in O. Karuppa Thevan's case. He also relies on the interim order in O.A. No. 142/94 given on 21.04.1995 in which it was stated that the Union Of India has not given permission to the State of Maharashtra to operate any post beyond one year, created by them, if any, by invoking provisions of the sub-rule (2) to Rule 4 of I.P.S. (Cadre) Rules.

6. I did not have the benefit of the oral submissions of the Learned Counsel for the respondents at the argument stage because he had chosen, for his own reasons, to withdraw from the Court when the Learned Counsel for the applicant began to present his case. The Learned Counsel for the applicant, however, has taken me through the written statement of the respondents in extensive.

7. It is clear that the transfer of the applicant was not dictated by the guidelines of the Election Commission. The transfer of the officer was admittedly necessitated to implement transfer of certain other officers. The State Government has admittedly over-looked the names of certain other officers who had completed more than requisite years of service and who could have been posted in the place of the applicant at Nanveej. The State Government has also stated that the question relating to cadre and non-cadre would be looked into later on, but the present transfer was required to be effected according to the priority of election. In my view, this submission of the State Government cannot be accepted. The State Government is not entitled to over-look the I.P.S. Cadre Rules while effecting transfers and Election Commission would certainly not condone such

irregularities if pointed out. The State Government cannot also be heard to say that a particular name was not included in the transfer order through oversight. It is clear that the applicant was transferred for extraneous reasons. The applicant has denied that he had requested for a transfer to a non-executive post and it can only be surmised that the applicant was transferred because of complaints against him. If so, the transfer clearly suffers from legal malafides. The transfer order is, therefore, liable to be quashed and set aside.

8. After the case was reserved for judgement, the order of this Tribunal in O.A. No. 153/98 decided on 19.02.1998 was brought to my notice by a proxy for the Counsel for the respondents. That was a case in which the Tribunal chose not to interfere with the order of transfer because the transfer was made at the instance of the Election Commission. In the present case, it is clearly established that the applicant was not covered by the guidelines of Election Commission and was not liable to be transferred and *prima-facie* was in violation of I.P.S. Cadre rules. Moreover, the Election process is already over, therefore, that judgement does not help the respondents.

9. I am however required to consider as to what relief to grant in the changed circumstances. On the one hand, the election process is over and on the other hand, the successor of the applicant has already taken over at Nagpur. The applicant has also confined

his relief to retention at Nagpur till May 1998 i.e. till the end of the academic session. The request of the applicant is clearly covered by the judgement of the Supreme Court in O. Karuppa Thevan's case. I, therefore, dispose of the O.A. by passing the following orders :-

The O.A. is partly allowed and the order transferring the applicant from the post of S.P. Railway, Nagpur to the post of Principal, R.P.T.S., Nanveej, is quashed and set aside. The respondents are directed to retain the applicant at Nagpur till the end of May, 1998, viz. end of academic session. Since the successor of the applicant has already taken over the post, the respondents may accomodate the applicant in any available post at Nagpur. If there is no vacancy available at Nagpur, the respondents may treat the applicant as on compulsory waiting, the applicant being held entitled to the same facilities as he was in the previous position, including pay, his residential accomodation and residential telephone. The respondents are at liberty to transfer the applicant anywhere in Maharashtra after May, 1998 but while doing so, they may consider the request of the applicant to be posted in the metropolitan area in the interest of education of his children. The O.A. is disposed of in these terms with no order as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A).